

Assembly Bill No. 809

CHAPTER 31

An act to add Section 17139.5 to the Revenue and Taxation Code, and to add Sections 1673, 1673.2, 1673.4, 1673.5, 1673.6, and 1673.7 to the Vehicle Code, relating to vehicles, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 8, 2000. Filed with
Secretary of State June 8, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 809, Lowenthal. Vehicles: smog impact fee: refunds.

(1) Existing law imposes a smog impact fee of \$300 on a person making application to register a motor vehicle in this state that was previously registered outside this state, with certain exceptions. However, in the case of *Jordan v. D.M.V.* (1999) 75 Cal.App.4th 449, the court ruled that the imposition of this fee is unconstitutional.

This bill would require the Department of Motor Vehicles to search its records to identify all persons who paid the smog impact fee on or after October 1, 1990, and, using funds appropriated to the department for this purpose, to provide a payment to each person identified, consisting of the amount of smog impact fee, any penalty paid to the department for late payment of the fee, and interest on the total amount. The bill would require the interest to be calculated as specified.

The bill would exclude any interest payment received under these provisions from "gross income" for purposes of the Personal Income Tax Law.

The bill would appropriate \$10,984,000 from the General Fund to the department to carry out its provisions.

The bill would make it a crime for any person to knowingly make a false statement or commit other specified acts in connection with a claim for refund of the smog impact fee, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would become operative only if SB 215 of the 1999–2000 Regular Session is enacted and becomes operative.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Chapter 3.3 (commencing with Section 6261) of Part 1 of Division 2 of the Revenue and Taxation Code imposes a three hundred dollar (\$300) smog impact fee on used motor vehicles that were last registered outside of this state and are not certified to meet the state's vehicle emission control requirements. The fee is due upon the initial registration of the vehicle in this state.

(b) The smog impact fee has been collected by the Department of Motor Vehicles on behalf of the state since October 1990, during which time approximately 1,700,000 vehicle owners have paid the fee, resulting in a total amount of approximately five hundred million dollars (\$500,000,000).

(c) Lawsuits challenging the imposition of the smog impact fee were the subject in the case of *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, in which the court ruled that imposition of the smog impact fee is unconstitutional and ordered the state to refund the fees to the plaintiffs.

(d) The Governor, in November 1999, announced that the state would not appeal the decision of the court in the case cited under subdivision (c) and that the state would refund the smog impact fee, plus interest, to all persons who have paid the fee. The Governor also instructed the Department of Motor Vehicles to stop collecting the fee and made provision in the proposed 2000–01 Budget Act for legislation appropriating funds to pay the smog impact fee refunds with interest.

(e) The Legislature, through enactment of this act and its companion measure, Senate Bill 215, intends to do all of the following:

(1) Repeal existing provisions of law that establish and impose the smog impact fee.

(2) Require the Department of Motor Vehicles to search its records and promptly identify those persons who were, at the time the application for registration was completed, the registered owner or lessee of the vehicle and who are eligible for a refund of the smog impact fee.

(3) Notify all eligible recipients of the pending refunds and provide a simplified verification and claims procedure for those refunds.

(4) Promptly provide payment of the smog impact fee refunds to eligible persons, including the three hundred dollar (\$300) fee, any

penalty fee collected for late payment of the smog impact fee, and any interest earned on those charges.

(5) Appropriate the full amount of funds necessary to refund the smog impact fee, any penalty fee collected for late payment of the smog impact fee, and any interest due to those who paid the fee.

SEC. 2. Section 17139.5 is added to the Revenue and Taxation Code, to read:

17139.5. For taxpayers who were not allowed to deduct the vehicle smog impact fee imposed by Section 6262 when paid or incurred, any interest paid by this state in conjunction with the refund of the smog impact fee shall be excluded from gross income.

SEC. 3. Section 1673 is added to the Vehicle Code, to read:

1673. For the purposes of refunding the smog impact fee, as prescribed in Sections 1673.2 and 1673.4, “registered owner or lessee” means the person or persons to whom the registration or title was issued when the transaction that included the imposition of the smog impact fee under Chapter 3.3 (commencing with Section 6261) of Part 1 of Division 2 of the Revenue and Taxation Code was completed.

SEC. 4. Section 1673.2 is added to the Vehicle Code, to read:

1673.2. (a) The department, in coordination with the Department of Finance, shall do all of the following:

(1) Search its records to identify the registered owner or lessee. Except as required under Section 1673.4, the department shall mail to the registered owner or lessee a refund notification form notifying the registered owner or lessee that he or she is eligible for a refund of the smog impact fee. This form shall identify the vehicle make and year, and include a refund claim that shall be signed, under penalty of perjury, and returned to the department.

(2) Shall acknowledge by mail claims for refund from registered owners or lessees received prior to the effective date of this section.

(3) Except as provided in Section 1673.4, shall verify whether the information provided in any claim is true and correct and shall refund the three hundred dollar (\$300) smog impact fee, plus the amount of any penalty collected for late payment of the smog impact fee, and any interest earned on those charges, to the person shown to be the registered owner or lessee.

(b) Notwithstanding Section 926.19 of the Government Code, interest shall be paid on all claims at a single annual rate, calculated by the Department of Finance, that averages the annualized interest rates earned by the Pooled Money Investment Account for the period beginning October 1990 and ending on the effective date of this section. Interest on each refund shall be calculated from the date the smog impact fee and vehicle registration transaction was completed to the date the refund is issued. Accrual of interest shall terminate one year after the effective date of this section.

(c) (1) Notwithstanding any other provision of law, those who paid the smog impact fee between October 15, 1990, and October 19, 1999, may file a claim for refund.

(2) Claims for refund by a registered owner or lessee shall be filed with the Department of Motor Vehicles within three years of the effective date of this section.

SEC. 5. Section 1673.4 is added to the Vehicle Code, to read:

1673.4. (a) Any claim submitted by a person other than a registered owner or lessee shall be filed within 30 days from the effective date of this section.

(b) If a claimant other than the registered owner or lessee files a claim, or has filed a claim prior to the effective date of this section, for refund in a manner and form verified by the department, the department shall mail a notification to the registered owner or lessee informing that person that he or she is eligible for a refund of the smog impact fee and that a competing claim for that fee has been filed. The registered owner or lessee shall have three years from the effective date of this section to inform the department that the registered owner or lessee opposes payment of the smog impact fee refund to the competing claimant. In that case, the refund shall be made to the registered owner or lessee and notice of that action shall be sent to the competing claimant. If the registered owner or lessee does not notify the department within the three-year period that he or she opposes the payment, the department shall pay the refund to the competing claimant.

(c) If any refund paid by the department under this section is disputed, any party that filed a claim may commence an action in small claims court. The small claims court action may not be filed if three years or more have elapsed from the date the department mailed the refund to either party.

(d) The State of California, its departments and agencies, and their officers or employees shall not be a party to a lawsuit between competing claimants relating to smog impact fee refunds.

SEC. 6. Section 1673.5 is added to the Vehicle Code, to read:

1673.5. The department shall attempt to recover any refund of the smog impact fee, or part thereof, that is erroneously made. Collection shall be initiated if the recipient fails to respond to the Department of Motor Vehicles' notice to pay the erroneous refund within 90 days in accordance with existing collection procedures utilized by the department.

SEC. 7. Section 1673.6 is added to the Vehicle Code, to read:

1673.6. It is unlawful to use a false or fictitious name, to knowingly make any false statement, or conceal any material fact on a refund claim for the smog impact fee that is filed with the department. A violation of this provision is punishable under Section 72 of the Penal Code. Any signed claim form submitted to the department for a

refund of the smog impact fee shall be signed under penalty of perjury.

SEC. 8. Section 1673.7 is added to the Vehicle Code, to read:

1673.7. (a) The department shall include the following notice with each check issued as a refund of the smog impact fee:

“The enclosed check is a refund of the \$300 Smog Impact Fee you paid to the Department of Motor Vehicles when you initially registered an out-of-state vehicle in California. In the case of *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, the court ruled the smog impact fee unconstitutional. The enclosed check includes an interest payment which has been calculated from the date the fee was paid to the date the refund is issued.

“If you have any questions about the enclosed refund, please contact your local office of the Department of Motor Vehicles.”

(b) No notice other than the one required under subdivision (a) may be included with a smog impact fee refund check.

SEC. 9. There is hereby appropriated to the Department of Motor Vehicles the sum of ten million nine hundred eighty-four thousand dollars (\$10,984,000) from the General Fund for the administrative costs of issuing the smog impact fee refunds. Funds shall be expended by the Department of Motor Vehicles only for the purposes of making the refunds required under Section 1673.2 and 1673.4 of the Vehicle Code.

SEC. 10. This act shall become operative only if Senate Bill 215 of the 1999–2000 Regular Session is enacted and becomes operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide, at the earliest possible time, a refund to the public of the unconstitutionally imposed smog impact fee, it is necessary that this act take effect immediately.

